



Town of Morrisville  
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September 28, 2011

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Reply Comments to PCIA/The DAS Forum Comments  
WC Docket No. 11-59 *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights-of-Way and Wireless Facilities Siting***

Dear Ms. Dortch:

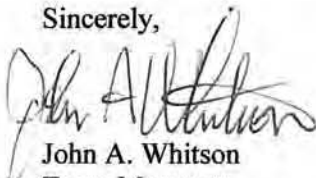
The Town of Morrisville, North Carolina respectfully submits attached Resolution 2011-096B in response to comments filed on July 18, 2011 by PCIA – *The Wireless Infrastructure Association and the DAS Forum* (PCIA/The DAS Forum) in the Commission's *Notice of Inquiry*.

Through the attached Resolution, the Town of Morrisville refutes allegations made by PCIA/The DAS Forum that the Town (1) has codified blanket bans across certain zoning districts, and (2) retains consultants identified by the wireless infrastructure industry as "obstructionist and problematic".

In addition, we believe it is vitally important that the Federal Communications Commission continue to enable local governments to use their local land use authority to control the safety, location, and appearance of telecommunications facilities in order to protect the health, safety, and welfare of their residents and businesses. This authority, combined with access to telecommunications consultants, has prevented potentially life threatening situations in our community. In one recent technical review of a collocation on an existing tower in our community, our telecommunications consultants identified that the engineer for the applicant had submitted a failing structural analysis, certifying that the tower could not support the additional weight proposed. On behalf of the Town, our consultants caught this deficiency and requested that the applicant provide a structural modification. The applicant complied with the modification request, which involved welding and bolting three flat steel rods to the existing tower, thereby preventing a potential hazard to the community.

I thank you for consideration of the Town's comments regarding this matter. If you have any questions, please contact me at (919) 463-6150 or [jwhitson@townofmorrisville.org](mailto:jwhitson@townofmorrisville.org).

Sincerely,

  
John A. Whitson  
Town Manager  
Town of Morrisville

Attachment: Resolution 2011-096B



**RESOLUTION 2011-096B OF THE MORRISVILLE TOWN COUNCIL PERTAINING  
TO REPLY COMMENTS TO THE FEDERAL COMMUNICATIONS COMMISSION IN  
RESPONSE TO THE PCIA/THE DAS FORUM COMMENTS TO THE FEDERAL  
COMMUNICATIONS COMMISSION NOTICE OF INQUIRY**

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**WHEREAS**, on April 7, 2011, the Federal Communications Commission (FCC) issued a notice of inquiry (NOI) relating to the "Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting, WC Docket No. 11-59"; and

**WHEREAS**, comments from interested parties were initially due by July 18, 2011, and the deadline for filing reply comments was August 30, 2011; and

**WHEREAS**, at the request of the National League of Cities, et al the FCC extended the reply comments deadline to September 30, 2011; and

**WHEREAS**, PCIA – The Wireless Infrastructure Association and The DAS Forum, a membership section of PCIA (PCIA/The DAS Forum) in response to the NOI, the Town of Morrisville was cited as one of a number of jurisdictions that (1) has codified blanket bans across certain zoning districts, and as a jurisdiction (2) that retains consultants identified by the wireless infrastructure industry as obstructionists and problematic; and

**WHEREAS**, the Town of Morrisville received a letter from the North Carolina League of Municipalities stating that comments submitted during the NOI process cited Morrisville as a "bad actor" and encouraging Morrisville to respond to the FCC regarding the "allegations made by the industry regarding your community"; and

**WHEREAS**, these allegations by the industry are not correct;

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF MORRISVILLE, NORTH CAROLINA, THAT THE FOLLOWING REPLY COMMENTS SHALL BE SUBMITTED TO THE FCC IN RESPONSE TO ALLEGATIONS MADE BY THE INDUSTRY:**

**1. Blanket Prohibitions of Wireless Facilities in Certain Zoning Districts Are Effective Prohibitions of Service (PCIA/The DAS Forum - pg 32):**

According to PCIA/The DAS Forum has made the allegation in their comment in response to the NOI that the Town has "ruled out wireless facilities entirely" with a "codified blanket ban", is incorrect. Actually, the Town allows new antennas to be collocated on existing towers and allows communications towers and associated equipment that are totally concealed within a building or structure in all zoning districts, restricting them only in the Town Center. New telecommunication towers are permitted within the Industrial Management (IM) district.

Additionally, PCIA/The DAS Forum cites Part IV of Exhibit B, which contains a list of nineteen (19) communities, including Morrisville, under the following heading:



"In their attempts to influence the scope and scale of wireless networks and infrastructure within their jurisdiction, local authorities are setting inappropriate and often illegal preferences on the types of wireless facilities that service providers can use and locating such facilities on municipal property. Jurisdictions that have codified blanket bans across certain zoning districts include:"

Morrisville is included on the list; however, there is no Ordinance Citation. The applicable provisions of the Town of Morrisville *Zoning Ordinance* include Part C, Article VI, Section 1.42 – Wireless Communication Antenna; Part C, Article IV – Table of Permitted Uses; Part C, Article VII, Section 2.10 – Telecommunications Towers; and Part E, Article II, Table 2 – Allowable Uses in the Town Center Districts. In summary:

- Per Part C, Article VI, Section 1.42 of the *Zoning Ordinance*, within the Town Center Boundary, wireless communication antenna and associated equipment that are totally concealed are permitted in the Corridor Commercial (CC) zoning district.
- Per Part C, Article IV of the *Zoning Ordinance*, new freestanding telecommunication towers are permitted in the IM zoning district with a Special Use Permit (SUP) from the Town Board.
- Per Part C, Article VII, Section 2.10(A) of the *Zoning Ordinance*, communications towers and associated equipment that are totally concealed within a building or structure are permitted in all conventional zoning districts (except the Town Center), but are subject to approval by the Town Board.
- Per Part C, Article VII, Section 2.10(H) of the *Zoning Ordinance*, towers located on top of structures, are subject only to height limitations above the building and the building maintaining the normal setbacks of the zoning district.
- Per Part C, Article VII, Section 2.10(O) of the *Zoning Ordinance*, collocations on existing towers that do not add to the tower height are approved administratively, and subject only to additional building code regulations.

Part 704 of 1996 Telecommunications Act regulations require that local governments may not prohibit or have the effect of prohibiting the provision of personal wireless services. However, local governments are expressly authorized to establish local siting preferences for telecommunications facilities, including identifying zoning districts in which telecommunications facilities are and are not allowed [confirmed by CityScape]. Therefore, the allegation that the Town has a "codified blanket ban" on cell towers or antennas or "ruled out wireless facilities entirely" is not correct.

**2. Retains consultants identified by the wireless infrastructure industry as obstructionists and problematic (PCIA/The DAS Forum – Exhibit B - pg 17):**

According to PCIA/The DAS Forum has made the allegation that "Jurisdictions that retain consultants identified by the wireless infrastructure industry as obstructionists and problematic..." PCIA provided a list of over one hundred such jurisdictions, which includes "City of Morrisville, North Carolina." The assumption is PCIA/The DAS Forum intended to identify Morrisville as a jurisdiction that engages what PCIA/The DAS Forum refers to as a "problematic consultant", which in this case would refer specifically to CityScape Consultants and again, is incorrect.

Specifically, PCIA/The DAS Forum states that **(PCIA/The DAS Forum - pgs 23-24)** "As part of their retention by a jurisdiction, a consultant typically requires the jurisdiction to adopt a wireless facility siting ordinance favored by the consultant, which include numerous application requirements and fees and requires applicants to establish an escrow account to pay for the application review. In nearly all cases, jurisdictions' use of consultants to review wireless facility applications is paid for by the applicant through an escrow account. The consultant invoices the jurisdiction each time the application is reviewed. If the escrow account is depleted by the consultant, the applicant is required to replenish it. The more information and application requirements that a consultant requires for a collocation, the more money the consultant can draw from the escrow to review the application – thus the consultant has a profit motive in requiring time-consuming and unnecessary information and studies in order to keep an application incomplete and subject to more review."

Further, PCIA/The DAS Forum states that **(PCIA/The DAS Forum - pg 24)** "These application requirements create a no-win situation – generating significant delays in what should be a routine permitting process and imposing unnecessary and extensive expenses in the deployment of antennas on existing infrastructure. Exhibit B lists a few of the jurisdictions that utilize wireless consultants with a history of this problematic practice."

The Town of Morrisville has had an Agreement for Services with CityScape Consultants since November 2007 to perform Third Party Expert Site Application Reviews. Furthermore, the Town does not utilize an escrow account. Rather, the fee is fixed and part of the FY12 Development Services Fee Schedule, which is adopted each year with the budget and posted to the webpage accordingly. The fixed fee for CityScape Consultants covers the review for all wireless communications facility (including new telecommunication towers and collocations) applications and a technical evaluation of a provider's request for facilities from start to finish. Additionally, per the Agreement for Services, CityScape Consultants offers a 72-hour turnaround time for third party reviews after the application is deemed complete. Consequently, as part of the NOI process, CityScape Consultants has provided Reply Comments in response to the PCIA/The DAS Forum comments.

Additionally, PCIA/The DAS Forum alleges that **(PCIA/The DAS Forum - pg 23)** "To the extent the jurisdiction requires any technical or engineering documentation to be filed with an application, the jurisdiction's own professional staff likely has the training and expertise to review such information. For example, in many jurisdictions, planning staff is qualified to review this material."

In the Town of Morrisville, this is simply not the case. Neither the Planning Department nor the Engineering Department has the training or expertise to review the structural analysis of the tower consistent with current standards or to verify that submitted documentation complies with FCC standards regarding human exposure to radio frequency energy and interference.

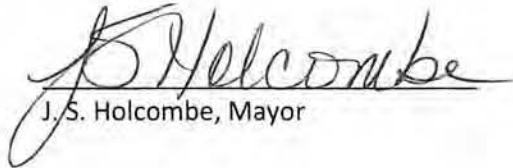
Currently, there are seven (7) freestanding towers within the Town of Morrisville, all of which have been in place since 2000. Since 2000, the Town has received only one (1) request for a new freestanding tower, processed eleven (11) collocations, and one (1) cabinet upgrade. Therefore, due to the infrequent submittals it does not make sense for Town staff to obtain the training to evaluate and review the applications. Hence, we have the Agreement of Services with CityScape Consultants.

In one recent case, the CityScape Consultants technical review for a collocation on an existing tower on Morrisville Parkway proved invaluable because the engineer for the applicant submitted a failing structural analysis, which means the engineer certified that the tower could not support the additional weight proposed. On behalf of the Town, CityScape Consultants caught this deficiency and requested that the applicant provide a structural modification design. The applicant complied with the modification design, which involved welding and bolting three flat steel rods to the existing tower. Staff may not have caught this important safety issue without the assistance of CityScape Consultants. Local government access to qualified consultants with expertise in telecommunication facility design and engineering is essential to helping local governments protect the public interest and ensure that new telecommunications facilities are sited in a safe and legal manner.

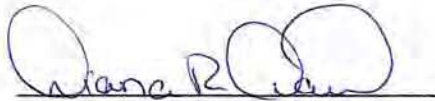
**Conclusion:**

As indicated above, our policies and procedures are designed to protect the public interest and to encourage the deployment of wireless facilities. Subsequently, federal preemption of local land use authority is unwarranted. Additionally, the Town of Morrisville has made efforts to streamline the review process by limiting the timeline and establishing an appropriate fee associated with technical review of wireless facilities. Accordingly, the Town feels that its' characterization by PCIA/The DAS Forum as a "bad actor" is not supported with facts.

Adopted this the 27<sup>th</sup> day of September 2011.

  
J. S. Holcombe, Mayor

ATTEST:

  
Diana R. Davis, Town Clerk

